

UNREDACTED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
VS)	NO. 1:19-CR-10041
)	JACKSON, TENNESSEE
)	
BRITNEY PETWAY, N.P.)	

CHANGE OF PLEA HEARING
JANUARY 3, 2020

BEFORE THE HONORABLE J. DANIEL BREEN,
UNITED STATES DISTRICT JUDGE

KRISTI HEASLEY, RPR
OFFICIAL COURT REPORTER
U.S. COURTHOUSE, SUITE 450
111 SOUTH HIGHLAND AVENUE
JACKSON, TENNESSEE 38301

UNREDACTED TRANSCRIPT

1 APPEARANCES

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4 FOR THE UNITED STATES:

5 JILLIAN D. WILLIS, ESQ.
6 U.S. DEPT OF JUSTICE
7 1400 New York Avenue NW
8 Washington, DC 20520
9

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10 FOR THE DEFENDANT:

11 LESLIE . BALLIN, ESQ.
12 BALLIN BALLIN & FISHMAN
13 200 Jefferson Avenue
Suite 1250
Memphis, TN 38103

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EXAMINATION INDEX
NO TESTIMONY OFFERED

UNREDACTED TRANSCRIPT

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EXHIBITS

NO EXHIBITS MARKED

UNREDACTED TRANSCRIPT

1 (Defendant present.)

2 THE COURT: Good morning.

3 MR. BALLIN: Morning, Your Honor.

4 Judge, my client is in the conference
5 room. She's got a couple of questions for me that I
6 would like to answer, if I could have just a moment.

7 THE COURT: Absolutely. You go right
8 ahead.

9 MR. BALLIN: Thank you, Your Honor.

10 THE COURT: Is there a plea agreement in
11 this matter?

12 MS. WILLIS: Yes, Your Honor.

13 MR. BALLIN: Yes.

14 THE COURT: Do you want me -- if you have
15 a copy, I can at least take a look at it, assuming we're
16 going to proceed.

17 MS. WILLIS: May I approach?

18 THE COURT: Yes, ma'am.

19 Is this my copy? Do you have another copy
20 that she has already executed?

21 MS. WILLIS: I have other copies, Your
22 Honor.

23 THE COURT: Okay.

24 MS. WILLIS: You can keep that copy.

25 THE COURT: Thank you.

1 (Pause in proceedings.)

2 THE COURT: Yes, sir.

3 MR. BALLIN: Your Honor, thank you for the
4 additional time.

5 Ms. Petway, is, I don't want to say this,
6 not used to being in this position, unlike others that I
7 have represented and others that have appeared before
8 Your Honor. She is ready to enter a plea. And I do want
9 to thank you again for giving us that additional time
10 this morning.

11 THE COURT: Sure. Sure.

12 Are you ready to proceed?

13 MR. BALLIN: Yes, sir.

14 THE COURT: If you would, you and your
15 client want to come up to the podium, please.

16 MR. BALLIN: Come on up. Sign that,
17 please.

18 THE COURT: Have you executed that?

19 MS. WILLIS: Yes.

20 THE COURT: Okay. All right.

21 This is in the matter of United States
22 versus Britney Petway, 19-10041.

23 Ms. Petway, the Court understands that you
24 wish to change your plea, and enter a plea of guilty to
25 Counts, I believe it's 1 through 6 of the indictment.

1 Is that correct, ma'am?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. Now before accepting
4 your plea, Ms. Petway, the Court is going to ask you a
5 series of questions to determine whether your plea is a
6 valid one. Before I do that, I'm going to ask the clerk
7 to place you under oath. If you will raise your right
8 hand, please.

9 (Defendant sworn.)

10 THE DEFENDANT: Yes.

11 THE COURT: All right. Would you state
12 your name for the record, please?

13 THE DEFENDANT: Britney Petway.

14 THE COURT: All right. Ms. Petway, as I
15 indicated, I'll be asking you some questions regarding
16 your plea. If there is anything I ask you that you do
17 not understand or wish to discuss with your attorney, Mr.
18 Ballin, would you let me know?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. And also I would ask
21 you that as you've been placed under oath in this matter,
22 the Court will assume the answers you are going to give
23 me today will be truthful. If it is later determined
24 that any of your responses were not truthful, you could
25 be subject to additional criminal charges including that

1 of perjury.

2 Do you understand that, ma'am?

3 THE DEFENDANT: Yes.

4 THE COURT: What is your age, please?

5 THE DEFENDANT: Thirty-four.

6 THE COURT: How far did you go in school?

7 THE DEFENDANT: A nurse --

8 THE COURT: You have a nurse practitioner
9 degree?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. So is that beyond
12 college or you have other training --

13 THE DEFENDANT: Yes.

14 THE COURT: -- beyond college?

15 THE DEFENDANT: Yes, Masters and
16 Doctorate.

17 THE COURT: Okay. Now before coming here
18 today, have you taken any type of medication or any other
19 type of drugs or alcoholic beverages that would affect
20 your understanding of these proceedings?

21 THE DEFENDANT: Medications? No, sir.

22 THE COURT: Okay. Or anything else that
23 might affect your understanding of -- do you understand
24 what we're doing here today, ma'am?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. Now have you had
2 sufficient opportunity to discuss this matter with your
3 attorney, Mr. Ballin?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And are you satisfied with his
6 advice and representation given to you in this case?

7 THE DEFENDANT: Yes.

8 THE COURT: Now I want to go over with you
9 some rights that you will be waiving or giving up by
10 reason of your plea.

11 Do you understand that under the
12 Constitution and laws of the United States that you are
13 entitled to a trial by a jury on the charges in this
14 indictment?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you also understand that at
17 that trial you would be presumed to be innocent of the
18 charges, and the government would have prove you were
19 guilty by competent evidence beyond a reasonable doubt?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that at the
22 trial the government would have to put on witnesses here
23 in this courtroom in your presence?

24 And your attorney could cross-examine
25 those government witnesses, could object to any evidence

1 that the government offers, and could offer evidence on
2 your behalf.

3 THE DEFENDANT: Yes.

4 THE COURT: Do you also understand that
5 Mr. Ballin, as your attorney, could have what is called
6 subpoenas issued to compel the production of documents or
7 the attendance of witnesses at any hearing or at the
8 trial of this case, should it proceed to that point?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you also understand that at
11 the trial you would have a right to testify as a witness,
12 if you wanted to do so?

13 But you would also have a right not to
14 testify. And if you decided not to testify, that could
15 not be used against you in any way.

16 THE DEFENDANT: Yes.

17 THE COURT: Do you also understand that if
18 you plead guilty and I accept your plea, you will be
19 giving up your right to a trial and the rights I've just
20 gone over with you? You would also be giving up your
21 right to appeal your conviction.

22 Do you understand that, ma'am?

23 THE DEFENDANT: Yes.

24 THE COURT: And as I indicated, there
25 would not be a trial based upon your plea. And the Court

1 would then sentence you, after considering what is called
2 a presentence report that the probation office is going
3 to prepare. And I'll go over that with you in just a
4 moment. All right?

5 THE DEFENDANT: Okay.

6 THE COURT: Ms. Petway, having gone over
7 those rights with you, ma'am, is it still your intention
8 to enter a plea of guilty to Counts 1 through 6 of the
9 superseding indictment?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you seen a copy of the
12 indictment?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you had a chance to read
15 it over and discuss it with your attorney?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. I'm going to go
18 over with you the substance of the superseding indictment
19 one more time, simply to make sure you're fully apprized
20 of what it is you are being charged with in this case.

21 The superseding indictment states as
22 follows:

23 The defendant, Britney Petway, was a Nurse
24 Practitioner licensed by the state of Tennessee. It's
25 alleged that Petway maintained a Drug Enforcement

1 Administration, a number. That you issued prescriptions
2 for controlled substances, including Schedule II
3 controlled substances of Oxycodone and Hydrocodone, and
4 Schedule IV controlled substances Alprazolam and
5 Clonazepam, Clonazepam, I may be mispronouncing some of
6 those, at Superior Health and Wellness Clinic, LLC, in
7 Jackson, Tennessee, also known as Superior Health,
8 outside the usual scope of professional practice and
9 without a legitimate medical purpose.

10 Paragraph 2. Defendant Dr. Charles
11 Alston, also referred to as Alston, was a licensed
12 medical doctor in Tennessee. Alston maintained a DEA
13 number and was the supervising physician for you, or for
14 Petway, at Superior Health while you issued prescriptions
15 for controlled substances outside of the usual scope of
16 professional practice, and without a legitimate medical
17 purpose.

18 Paragraph 3. The Controlled Substances
19 Act, also referred to as CSA, govern the manufacturing,
20 distribution and dispensing of controlled substances in
21 the United States. With limited exceptions for medical
22 professionals, the CSA makes it unlawful for any person
23 to knowingly or intentionally manufacture, distribute or
24 dispense a controlled substance, or conspire to do so.

25 Paragraph 4. Medical practitioners, such

1 as physicians and nurse practitioners, who are authorized
2 to prescribe controlled substances by the jurisdiction in
3 which they were licensed to practice medicine, were
4 authorized under the CSA to prescribe, or otherwise
5 distribute controlled substances if they were registered
6 with the Attorney General of the United States, pursuant
7 to 21, United States Code, Section 822(b) and 21, Code of
8 Federal Regulations, Section 1306.03.

9 Upon application by the practitioner, the
10 DEA assigned a unique registration number to each
11 qualifying medical practitioner, including physicians and
12 nurse practitioners.

13 Paragraph 5. The CSA, in its implementing
14 regulations, set forth which drugs and other substances
15 were defined by law as, quote, controlled substances,
16 unquote, and assigned those controlled substances to one
17 of five schedules, Schedule I, II, III, IV or V,
18 depending on their potential for abuse, likelihood of
19 physical or psychological dependency, accepted medical
20 use, and accepted safety for use under medical
21 supervision.

22 Paragraph 6. A controlled substance
23 assigned to Schedule II meant that the drug had a high
24 potential for abuse, was highly addictive, and that the
25 drug had a currently accepted medical use and treatment

1 in the United States, or currently accepted medical use
2 with severe restrictions.

3 Abuse of a Schedule II controlled
4 substance could lead to severe psychological and/or
5 physical dependence.

6 Pursuant to the CSA, and its implementing
7 regulations, Hydrocodone was classified as a Schedule II
8 controlled substance after October 2014, before which
9 time it was classified as a Schedule III controlled
10 substance. It was an opioid pain medication.

11 B. Oxycodone was classified as a Schedule
12 II controlled substance. Oxycodone was sold generically
13 and under a variety of brand names including Oxycontin,
14 Roxicodone, Endocet and Percocet.

15 Oxycodone, an opioid pain medication, is
16 about 50 percent stronger than Morphine.

17 Paragraph C. Morphine Sulfate was
18 classified as a Schedule II controlled substance.

19 D. Hydrocodone and Oxycodone were among
20 the Schedule II opioid controlled substances that had the
21 highest potential for abuse and associated with fatal
22 overdose.

23 Paragraph 7. A controlled substance
24 assigned to Schedule IV meant that the drug or other
25 substances had a lower potential for abuse than Schedule

1 II drugs or other substances.

2 The drug or other substances had a
3 currently accepted medical use in the United States. And
4 abuse of this drug or other substances may lead to a
5 physical, to a limited physical dependence or
6 psychological dependence relative to the drugs or other
7 substances in the higher schedules.

8 Pursuant to the CSA and its implementing
9 regulations, Alprazolam, a benzodiazepine, was classified
10 as a Schedule IV controlled substance.

11 Alprazolam, sometimes prescribed under the
12 brand name Xanax, was a medication used to treat anxiety.

13 B. Clonazepam, a benzodiazepine, was
14 classified as a Schedule IV controlled substance.

15 Clonazepam, sometimes prescribed under
16 brand name Klonopin, if I'm pronouncing that --

17 THE DEFENDANT: Klonopin.

18 THE COURT: Thank you. Was a medication
19 used to treat anxiety and seizures.

20 Paragraph 8. Chapter 21 of the Code of
21 Federal Regulations, Section 1306.04 govern the issuance
22 of prescriptions. And provided, among other things, that
23 a prescription for a controlled substance, quote, must be
24 issued for the legitimate medical purpose by an
25 individual practitioner acting in the usual course of his

1 or her professional practice, unquote.

2 Paragraph 9. Chapter 21 of the Code of
3 Federal Regulations, Section 1306.04, further directed
4 that, quote, an order purporting to be a prescription
5 issued not in the usual course of professional treatment
6 is not a prescription within the meaning and intent of
7 the CSA. And the person knowingly filling such a
8 purported prescription, as well as the person issuing it,
9 should be subject to the penalty provided for violations
10 of the provisions of law relating to controlled
11 substances, unquote.

12 Paragraph 10. Chapter 0880-6 of the Rules
13 of Tennessee State Board of Medical Examiners govern the
14 supervision of nurse practitioners by physicians in
15 Tennessee.

16 According to the regulations, a
17 supervisory physician should be responsible for ensuring
18 compliance with the applicable standard of care.

19 Rules of Tennessee Board of Medical
20 Examiners 0880-6-.02, Subsection 6.

21 Additionally, a supervising physician
22 shall develop clinical guidelines in collaboration with
23 the certified nurse practitioner, to included his method
24 of documenting consultation and referral.

25 Once every 10 business days, the

1 supervising physician shall make a personal review of the
2 historical, physical and therapeutic data, and shall so
3 certify by signature on any patient within 30 days when a
4 controlled substance has been prescribed.

5 Citing rules of Tennessee Board of Medical
6 Examiners 0880-6-.02, Subsection 7(e).

7 Paragraph 11. It is well known that the
8 combination of high dose opioids and benzodiazepines, for
9 example Alprazolam, in any dose have significant impact
10 upon the risk of patient intoxication and overdose.

11 For a treating physician to prescribe this
12 combination of high doze opioids and benzodiazepines for
13 a legitimate medical purpose, physician needed to
14 determine at a minimum that the benefits of the drugs
15 outweigh the risk to the patient's life.

16 Paragraph 12. On March 16, 2016, the
17 Centers for Disease Control and Prevention, the CDC,
18 issued CDC guidelines for prescribing opioids for chronic
19 pain.

20 In that guidance the CDC warned that
21 medical professionals should avoid prescribing opioids
22 and benzodiazepines, for example, Xanax, Alprazolam or
23 Lorazepam, concurrently whenever possible because of the
24 risk of potentially fatal overdose.

25 Prescribing and issuing these two

1 medications around the same time compounds the patient's
2 risk of overdose and death from the prescribed drugs by
3 four times.

4 Moreover, there is a significant diversion
5 risk of prescribing or issuing these drugs around the
6 same time.

7 Benzodiazepines serves as a, quote,
8 potentiater, quote, for the opioids euphoric affect by
9 increasing the, quote, high, unquote, a user may obtain
10 from opioids. It is, therefore, offer sought for this
11 non-legitimate medical purpose.

12 Paragraph 13. On August 31st, 2016, the
13 U.S. Food and Drug Administration issued a, quote, black
14 box, unquote, warning, its strongest warning to the drug
15 labeling of prescription opioid pain medicines and
16 benzodiazepines.

17 The FDA specifically warned that combined
18 use of opioids and benzodiazepines suppresses the central
19 nervous system and results in serious side effects, such
20 as slowed or difficult breathing and death.

21 The FDA further warned healthcare
22 professionals to limit prescribing opioids with
23 benzodiazepines, and cautioned that such medication
24 should only be prescribed together when alternative
25 treatment options are inadequate.

1 Paragraph 14. Urine drug screens were
2 relied upon in the pain management industry as a means of
3 identifying patient's noncompliance with the patient's
4 treatment plan.

5 Urine drug screens were used to identify
6 abuse of illicit and controlled substances not prescribed
7 to a patient, and to identify a patient's failure to take
8 drugs prescribed for the patient's treatment of pain.

9 Do you wish to consult with your attorney
10 for something, Ms. Petway? Did y'all need to talk?

11 MR. BALLIN: We are good. Thank you,
12 Judge. Appreciate that.

13 THE COURT: Just wanted to make sure.

14 Paragraph 15. Tennessee's Controlled
15 Substances Monitoring Program, CSMD, was a means of
16 detecting a pain management patient's noncompliance with
17 a patient's treatment plan.

18 A CSMD report contained prescription data
19 for all controlled substances dispensed by pharmacies in
20 the state of Tennessee. Pharmacists were required to
21 report the patient's name, the particular controlled
22 substance and dosage dispensed, the quantity dispensed,
23 the number of days supplied, the prescription prescribing
24 physician's name, the date the prescription was issued,
25 the dispensing pharmacy's name, the type of payment, and

1 the date the controlled substances were dispensed.

2 Count 1, conspiracy to distribute and
3 dispense controlled substances.

4 Paragraph 16. Paragraphs 1 through 15 of
5 the indictment are re-alleged and incorporated by
6 reference and fully set forth herein.

7 Paragraph 17. From in or about July 2016,
8 through in or around April 2019, in the Western District
9 of Tennessee, and elsewhere, the defendants Petway and
10 Alston, did knowingly and intentionally combine,
11 conspire, confederate and agree with each other, and with
12 other persons both known and unknown to the Grand Jury,
13 to violate Title 21, United States Code, Section
14 841(a)(1).

15 That is, to knowingly and intentionally
16 unlawfully distribute and dispense mixture and substances
17 containing a detectable amount of Schedule II controlled
18 substances, including Oxycodone and Hydrocodone, not for
19 a legitimate medical purpose and outside the scope of
20 professional practice. All in violation of Title 21,
21 United States Code, Section 846.

22 Paragraph 18 is entitled purpose of the
23 drug conspiracy.

24 It was the purpose and object of the
25 conspiracy for defendants to unlawfully enrich themselves

1 by, among other things:

2 A, prescribing controlled substances
3 without a legitimate medical purpose and outside of scope
4 of professional practice;

5 B, generating large profits from those
6 prescriptions;

7 And C, diverting the proceeds from those
8 controlled substance prescriptions for the personal use
9 and benefits of the defendants and their coconspirators
10 known and unknown to the Grand Jury.

11 Next is the manner and means of the
12 conspiracy. Paragraph 19.

13 The manner and means for which the
14 defendant sought to accomplish the purpose and object of
15 the conspiracy including, among other things:

16 Paragraph 20. Petway would and did use
17 her status as a licensed nurse practitioner, her DEA
18 registration number, and her medical practice at Superior
19 Health, to knowingly and intentionally prescribe
20 Oxycodone, Morphine and Hydrocodone, in addition to
21 various benzodiazepines including Alprazolam and
22 Clonazepam, and other controlled substances outside the
23 course of professional practice and not for a legitimate
24 medical purpose.

25 Paragraph 21. Petway paid Alston to be

1 her supervising physician.

2 Paragraph 22. Alston gave Petway's
3 practice the appearance of legitimacy by signing the
4 State of Tennessee Board of Nursing, quote, Advanced
5 Practice Nurse Notice and Formulary, unquote, form, filed
6 with the state and stating that he was Petway's
7 supervising physician from on or about March 11th, 2016,
8 to at least through on or about April of 2019.

9 Paragraph 23. Alston purported to
10 supervise Petway at Superior Health, and was responsible
11 for reviewing all of Petway's patient charts for the
12 patients who were issued prescriptions for controlled
13 substances.

14 Alston approved Petway's prescriptions for
15 controlled substances, even though the majority were not
16 for a legitimate medical purpose and were outside the
17 scope of the medical practice, professional practice,
18 excuse me.

19 Paragraph 24. Petway and Alston were
20 required under Tennessee law to register Superior Health
21 as a pain management clinic with the state of Tennessee,
22 but did not.

23 Paragraph 25. Under Alston's supervision
24 Petway often:

25 Paragraph A, signed blank prescriptions

1 for purported patients and gave them to Superior Health
2 employees to compete as to the type of controlled
3 substance and to the patients' name;

4 B, prescribed controlled substances
5 without ever seeing or treating the purported patients;

6 C, prescribed controlled substances to
7 close friends and relatives;

8 D, prescribed the dangerous drug
9 combination known as the, quote, Holy Trinity, unquote,
10 comprised of opioids, usually Oxycodone, benzodiazepines,
11 usually Alprazolam, and the muscle relaxer Carisoprodol;

12 E, prescribed dangerous combinations of
13 opioids and benzodiazepines;

14 F, failed to monitor patients for
15 addiction;

16 G, failed to monitor patients for a
17 diversion of the prescribed drugs into the illegal drug
18 market;

19 H, ignored drug scenes showing patients
20 were taking illicit drugs;

21 I, ignored drug screens showing patients
22 were not taking the controlled substances prescribed
23 them, and, therefore, were likely diverting the drugs to
24 other users;

25 J, failed to corroborate patients' reports

1 of pain through x-rays, MRIs and other diagnosis tools;
2 K, failed to properly examine patients;
3 L, failed to properly diagnose patients;
4 M, failed to provide treatment plans for
5 patients;

6 And N, failed to recommend alternative
7 forms or modalities of treatment for pain.

8 All of this being in violation of 21,
9 United States Code, Section 846.

10 So, Ms. Petway, do you understand what
11 you're being charged with in Count 1 of the indictment,
12 ma'am?

13 THE DEFENDANT: Yes.

14 THE COURT: Counts 2 through 6 charges you
15 with unlawfully distributing and dispensing controlled
16 substances and aiding and abetting, in violation of 21,
17 United States Code, Section 841(a)(1)(C), (b)(1)(C) and
18 18, United States Code, Section 2.

19 Paragraph 26. All previous paragraphs of
20 the superseding indictment are re-alleged and
21 incorporated by reference as though fully set forth
22 herein.

23 Paragraph 27. During the dates specified
24 below, in the Western District of Tennessee, and
25 elsewhere, defendants Britney Petway and Charles Alston,

1 aided and abetted by each other, and/or others known and
2 unknown to the Grand Jury, and aiding and abetting each
3 other and others known and unknown to the Grand Jury, did
4 intentionally and knowingly distribute and dispense, and
5 caused to be distributed and dispensed, outside the usual
6 course of professional practice, and not for a legitimate
7 medical purpose, the controlled substances alleged in a
8 following counts.

9 Count 2. The range between April 19th of
10 2018 to August 13th of 2018. The controlled substance is
11 Morphine Sulfite. The patient is K.B. And the date of
12 birth of, I assume, the patient is 5/23/67.

13 Count 3. The date range is July 21st of
14 2016 to April 25th of 2018. Controlled substances
15 involved include Hydrocodone and Oxycodone. The patient
16 initials are J.C. Their date of birth is 11/4/91.

17 Paragraph 4. The date range is July 7,
18 2016 to November 22nd of 2016. The controlled substance
19 is Oxycodone HCL. The patient initials were B.D. The
20 date of birth of that patient is 2/5/81.

21 Count 5. From the date range of July 5th
22 of 2016 to June 18th of 2018. The specific controlled
23 substance is Hydrocodone. The patient initials are C.D.
24 And their date of birth is 5/18/54.

25 Count 6. January, the date range is

1 January 30th of 2017 to May 17th of 2018. The controlled
2 substance is Alprazolam, also known as Xanax. The
3 patient initials is C.D. And the patient's date of birth
4 is 5/18/54.

5 These acts all being in violation of Title
6 21, United States Code, Section 841(a)(1), (b)(1)(C) and
7 18, United States Code, Section 2.

8 Do you understand what you are being
9 charged with in Counts 2 through 6, ma'am?

10 THE DEFENDANT: Yes.

11 THE COURT: There is also a notice of
12 criminal forfeiture under 21, United States Code, Section
13 853.

14 Paragraph 28, indicates the allegations
15 contained in Counts 1 through 6 of the indictment are
16 hereby re-alleged and incorporated by reference for the
17 purposes of alleging forfeitures, pursuant to 21, United
18 States Code, Section 853.

19 Paragraph 29, pursuant to Title 21, United
20 States Code, Section 853, the United States gives notice
21 to defendants Petway and Alston that upon conviction of
22 an offense in violation of 21, United States Code,
23 Section 841, the following property shall be subject to
24 forfeiture.

25 A. All property constituting or derived

1 from any proceeds obtained directly or indirectly as a
2 result of such offense.

3 B. All property used or intended to be
4 used in any manner or part to commit, or to facilitate
5 the commission of the offense.

6 Paragraph 30. Defendant Petway and Alston
7 are notified that upon conviction a money judgment may be
8 imposed equal to the total value of the property subject
9 to forfeiture.

10 It says in paragraph 31. In the event
11 that one or more conditions listed in Title 21, United
12 States Code, Section 853(p) exists, United States will
13 seek to forfeit any other property of defendants up to
14 the total value of the property subject to forfeiture.

15 Do you understand what the possible
16 criminal forfeiture might be involved here, ma'am?

17 THE DEFENDANT: Yes.

18 THE COURT: Now, Ms. Petway, the -- sorry.
19 Do the penalties. I apologize.

20 The potential penalty for Count 1, which I
21 just reviewed with you, could be a term of imprisonment
22 of not more than 20 years, a fine of up to \$1 million, or
23 both, at least three years supervised release, along with
24 a mandatory special assessment of \$100.

25 Counts 2 through 6 could be a term of

1 imprisonment of not more than 20 years, a fine of up to
2 \$1 million fine, or both, at least three years supervised
3 release, along with a mandatory special assessment of
4 \$100.

5 So do you understand what the possibility
6 penalties are regarding Counts 1 through 6, ma'am?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, Ms. Petway, do you
9 understand that any sentence that you might receive in
10 this case would be without what is called parole?

11 Parole is a term sometimes used in State
12 Court criminal matters, whereby a person who is sentenced
13 there could be released earlier from their term of
14 imprisonment and placed on parole. But that concept does
15 not apply here in Federal Court.

16 Do you understand that, ma'am?

17 THE DEFENDANT: Yes.

18 THE COURT: Now with respect to the period
19 of supervised release that I mentioned to you in
20 describing the penalty aspect of your charge, do you
21 understand that there would be a period of supervision by
22 the probation office after your release from any type of
23 jail time or incarceration that you might receive?

24 And that if you violate the conditions of
25 your supervised release, that could result in you serving

1 additional time in jail up to the length of that
2 supervised release period.

3 Do you understand that, ma'am?

4 THE DEFENDANT: Yes.

5 THE COURT: Now has anyone threatened you
6 or tried to force you in any way to plead guilty to these
7 charges?

8 THE DEFENDANT: No.

9 THE COURT: The Court has received a
10 document entitled a plea agreement. It is five pages in
11 length. It appears to have your signature, along with
12 that of your attorney, Mr. Ballin, Leslie Ballin, along
13 with that of Ms. Willis, all on page five.

14 I'm going to ask the clerk to hand the
15 plea agreement back to you and ask if you would confirm
16 that is your signature on the plea agreement.

17 Is that your signature, ma'am?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Ms. Petway, did you sign that
20 document following your review of it with your attorney
21 freely and voluntarily?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Ms. Willis, are
24 you going to go over the terms of the plea agreement with
25 Ms. Petway?

1 MS. WILLIS: Yes, sir.

2 THE COURT: All right. Please listen to
3 what Ms. Willis has to say. I'll be asking you some
4 questions about that following her review of it. Just
5 listen to what she has to say.

6 Go ahead, Ms. Willis.

7 MS. WILLIS: Under the terms of the plea
8 agreement the defendant agrees that she is pleading
9 guilty to the superseding indictment because she is
10 guilty of the charges contained within.

11 The agreed upon value of the property
12 subject to forfeiture for defendant's commission of the
13 offenses to which she has agreed to plead guilty is
14 \$9,000.

15 Defendant will not contest, challenge, or
16 appeal in any way the administrative or judicial, civil
17 or criminal forfeiture to the United States of the agreed
18 upon value of property subject to forfeiture.

19 The defendant consents to entry of any
20 order, declaration --

21 THE COURT REPORTER: Wait. Wait. Slow
22 down, please.

23 MS. WILLIS: Okay. My apologies.

24 Regarding such property, and agrees to
25 waive the time limitation for the administrative

1 forfeiture of the agreed upon funds.

2 The defendant further agrees to hold the
3 government, officers, agents, and employees harmless from
4 any claim whatsoever in connection with the seizure,
5 forfeiture, storage, or disposal of the such property.

6 And just so everyone knows where I'm at,
7 I'm on 2C.

8 If she had received a trial and had been
9 convicted, she would have the right to appeal the
10 conviction. She understands that by pleading guilty she
11 give up the right to give up, the right to appeal the
12 conviction.

13 Based on concessions made in this plea
14 agreement by the United States, she also hereby waives
15 her right to appeal her sentence, unless the sentence
16 exceeds the maximum permitted by statute, or is the
17 result of an upward departure from the guideline range
18 that the Court establishes at sentencing.

19 Except with respect to claims of
20 ineffective assistance of counsel, or prosecutorial
21 misconduct, she waives her right to challenge the
22 sufficiency or the voluntariness of her guilty plea on
23 direct appeal or in any collateral attack.

24 The special assessment of \$600 is due and
25 payable to the U.S. District Court Clerk's Office. And

1 the defendant agrees to provide the United States with
2 evidence of payment immediately after sentencing.

3 And this writing constitutes the entire
4 plea agreement between the defendant and the United
5 States with respect to the plea of guilty. No additional
6 promises, representations or inducements, other than
7 those referenced in this plea agreement, have been made
8 to the defendant or to the defendant's attorney with
9 regard to this plea, and none will be made or entered
10 into unless in writing and signed by all parties.

11 I'm now moving on to page two, number
12 three.

13 The defendant admits that if put it its
14 burden at trial, the government would be able to prove
15 the following beyond a reasonable doubt.

16 Does the Court want me to continue with
17 the proffer?

18 THE COURT: Go ahead and cover that at
19 this point, if you would.

20 MS. WILLIS: From in and around June 2016
21 to in and around April 2019, defendant Petway owned and
22 operated Superior Health and Wellness, located in the
23 Eastern Division of the Western District of Tennessee.

24 While practicing at Superior Health, Ms.
25 Petway, a Nurse Practitioner, distributed Hydrocodone,

1 Oxycodone, Morphine and Alprazolam outside the scope of
2 professional practice and not for legitimate medical
3 purpose.

4 Specifically, Ms. Petway unlawfully
5 distributed Morphine Sulphate to K.D. from April 2018
6 until August of 2018.

7 Hydrocodone and Oxycodone to J.C. from
8 July 2016 until April 2018.

9 Oxycodone to B.D. from July 2016 to
10 November 2016.

11 And Hydrocodone and/or Alprazolam to C.D.
12 from July 2017 to June 2018.

13 These prescriptions were provided to these
14 four patients over the course of approximately 50 patient
15 visits during the relevant conduct period. And Ms.
16 Petway, through Superior Health, received approximately
17 \$9,000 for these crimes, which she has agreed to forfeit
18 above.

19 During the relevant conduct period, Dr.
20 Charles Alston was Ms. Petway's preceptor or supervising
21 physician. He had access to her controlled substance
22 charts and reviewed patient charts monthly at her
23 practice.

24 Ms. Petway, through Superior Health, paid
25 Dr. Alston approximately \$750 per month to be her

1 preceptor. Without Dr. Alston, Ms. Petway could not
2 write the prescriptions detailed above.

3 Ms. Petway conspired with Dr. Alston, and
4 Dr. Alston aided and abetted in distributing controlled
5 substances outside the scope of professional practice and
6 not for a legitimate medical purpose.

7 On page three, number four. The defendant
8 understands that if United States receives information
9 between the signing of this agreement and the time of the
10 sentencing that the defendant has previously engaged in,
11 or if she engages in the future, conduct inconsistent
12 with the acceptance of responsibility, including, but the
13 limited to, participation in any additional criminal
14 activities between now and the time of sentencing, this
15 position could change.

16 Should it be judged by the United States
17 that the defendant has committed or attempted to commit
18 any additional crimes, or has engaged in any conduct
19 constituting obstruction or impeding justice within the
20 meaning of the United States Sentencing Guidelines,
21 Section 3C1.1, from the date of the defendants signing of
22 this plea agreement, to the date of the defendant's
23 sentencing, or if the defendant attempts to withdraw the
24 plea, the government would be released from its
25 obligations, and would become free to argue for any

1 sentence within the statutory limits.

2 Such a breach by the defendant would not
3 release the defendant from her guilty plea.

4 The defendant further expressly waives her
5 rights pursuant to 410(a) of the Federal Rules of
6 Evidence upon affixing her signature to this plea
7 agreement.

8 The defendant understands and agrees that
9 in the event that the defendant violates the plea
10 agreement, the defendant does not enter her plea of
11 guilty, or her guilty plea is for any reason withdrawn,
12 any statements made by the defendant to law enforcement
13 agents, or an attorney for the prosecuting authorities
14 during plea discussion, any statements made by the
15 defendant during any court proceeding involving the
16 defendant's plea of guilty, including the agreed facts
17 set forth herein, and any other factual basis or
18 summaries signed by the defendant, and any leads from
19 such statement, factual basis, or summaries shall be
20 admissible for all purposes against the defendant in any
21 and all criminal proceedings.

22 The parties agree that the defendant's
23 base offense level including relevant conduct under the
24 United States Sentencing Guidelines Section 2D1.1(c)(8)
25 is 24.

1 Specifically, defendant admits that during
2 the relevant time period the defendant conspired to
3 distribute and did distribute Oxycodone, Hydrocodone,
4 Morphine and Alprazolam. And this was knowingly and
5 intentionally done with no legitimate medical purpose and
6 outside the scope of professional practice.

7 The converted drug weight of these
8 prescriptions is at least 100 kilograms, but less than
9 400 kilograms.

10 And that's the agreed weight under the
11 United States Sentencing Guidelines Section 2D1.1(c)(8).

12 The parties do not agree on whether or not
13 the special skill enhancement applies, only that the base
14 offense level is 24.

15 Pursuant to Section 3E1.1(a) and (b) of
16 the United States Sentencing Guidelines, the government
17 agrees to a three level decrease in the offense level for
18 the defendant's timely acceptance of responsibility,
19 providing that the defendant demonstrates an acceptance
20 of responsibility for the offense up to and including the
21 time of sentencing.

22 If the United States receives information
23 between the signing of this agreement and the time of the
24 sentencing that the defendant has previously engaged in,
25 or if she engages in the future conduct inconsistent with

1 the acceptance of responsibility, including, but not
2 limited to, participation in any additional criminal
3 activities between now and the time of sentencing, this
4 position could change.

5 If the defendant satisfies the
6 requirements of Section 5C1.2 of the United States
7 Sentencing Guidelines, the government agrees not to
8 oppose the application of the safety valve provisions at
9 sentencing.

10 The United States agrees not to allocute
11 for a fine greater than \$10,000. This fine is separate
12 from, and does not include the agreed upon forfeiture
13 amount.

14 Neither the United States, nor any law
15 enforcement officer can or has made promises or
16 representations as to what the sentence imposed by the
17 Court will be.

18 By signing this agreement the defendant
19 affirms that she is satisfied with her lawyer's counsel
20 and representations, and freely and voluntarily enters
21 into the plea agreement.

22 And the defendant understands that this
23 writing constitutes the entire plea agreement between the
24 parties with respect to the plea of guilty.

25 No additional promises, representation or

1 inducements, other than those referenced in this plea
2 agreement, have been made to the defendant or to the
3 defendant's attorney with regard to this plea, and none
4 will be made or entered into unless in writing and signed
5 by all parties.

6 THE COURT: Ms. Petway, is this your
7 understanding as to the terms of the plea agreement you
8 had with the government, ma'am?

9 THE DEFENDANT: Yes.

10 THE COURT: Now as I mentioned to you,
11 there is going to be a presentence report prepared in
12 this case by the probation office.

13 Until the Court has had a chance to
14 receive and review that document, I will not be making a
15 decision, at least today, as to whether I will accept the
16 plea agreement.

17 Now if for some reason the Court did not
18 accept the plea agreement, and as I sit here today I'm
19 not sure of any reason why I would not, but if for some
20 reason I did not, that would not permit you to withdraw
21 your plea at a later date.

22 Do you understand that, ma'am?

23 THE DEFENDANT: Yes.

24 THE COURT: Now have you and Mr. Ballin
25 had an opportunity to discuss generally the application

1 of, and it's been mentioned to you in the plea agreement,
2 the application of what is called the United States
3 Sentencing Guidelines to your case?

4 Have y'all talked about that, ma'am?

5 THE DEFENDANT: Yes.

6 THE COURT: I'm sure as Mr. Ballin
7 described to you, those guidelines provide to this Court
8 general ranges of sentencing that I can consider in
9 determining what the appropriate sentence might be in any
10 case.

11 Those guidelines are no longer mandatory
12 upon the Court, they're only advisory. However, I'm
13 still directed to consider them, along with other factors
14 that Congress has established in determining what an
15 appropriate sentence might be in any given case.

16 I mentioned the presentence report a
17 couple of times. The probation office will submit that
18 document. A copy will be given to myself, to your
19 attorney, and to the governments attorney.

20 Mr. Ballin will have the opportunity to
21 review it with you and to file a position paper or any
22 objections you might have to the contents of that report.

23 It will contain information about the
24 charges in this indictment, about any prior criminal
25 record you may have, as well as other information such as

1 your family history, medical history, employment history,
2 things of that nature.

3 It may also make a recommendation
4 regarding a sentence in this case. You will see that
5 recommendation and have a chance to discuss that with
6 your attorney.

7 Now I'm not bound by that recommendation,
8 but I will consider it in making my determination about
9 the sentence to be imposed in this case.

10 Do you understand that, ma'am?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, ma'am, the Court has
13 previously advised you that you would be giving up your
14 right to appeal your conviction, that is a finding of
15 guilt, if you do plead guilty to this charge.

16 Now as I understand from the plea
17 agreement it indicates that you, if the Court accepts it,
18 you will be waiving your right to appeal your sentence
19 except in two instances, as I believe it's mentioned in
20 page two.

21 One being that, if the Court sentenced you
22 above the statutory maximum, or if at the time of
23 sentencing I made a determination about what the advisory
24 guideline range was and sentenced you above that range.

25 In other words, other than those two

1 instances, you would be otherwise waiving or giving up
2 your right to appeal your sentence.

3 Is that your understanding, ma'am?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Now other than
6 conversations you may have had with Mr. Ballin about how
7 the advisory guidelines might apply in your case, has
8 anyone else made any type of promise or prediction to you
9 about what your sentence would be if you plead guilty to
10 these charges?

11 THE DEFENDANT: No.

12 THE COURT: Now the government has gone
13 over with you the facts that it intended or would have
14 shown, and which apparently you are admitting to as a
15 result of this case. Is that correct?

16 Are you admitting to those facts as set
17 forth in the plea agreement, ma'am?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. And are you admitting
20 to those facts because you are, in fact, guilty of those
21 charges, ma'am?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Ms. Petway, the
24 Court has advised you of your right to a trial and your
25 other rights in connection with this matter.

1 The Court does find -- sorry. Is there
2 something you...

3 MR. BALLIN: We're good.

4 THE COURT: Okay. The Court does find
5 that you are freely and voluntarily pleading guilty to
6 Counts 1 through 6 of the indictment.

7 Having acknowledged your guilt, I'm going
8 to accept your plea and your admission, and enter a
9 judgment of guilty based on that plea.

10 When will this matter be set for
11 sentencing, please?

12 THE CLERK: On Thursday, April 9th, 2020,
13 at 10:00 o'clock.

14 THE COURT: Is that all right with the
15 defendant?

16 MR. BALLIN: That's good, Your Honor.

17 THE COURT: Ms. Willis, is that all right
18 with the government?

19 MS. WILLIS: Yes, Your Honor.

20 THE COURT: All right. Ms. Petway, that
21 will be the date of your sentencing, ma'am.

22 Do you have any questions about what the
23 Court has been over with you this morning?

24 MR. BALLIN: No, sir.

25 THE COURT: What about her present bond

1 status, Ms. Willis?

2 MS. WILLIS: We're not asking for any
3 change in her bond status.

4 THE COURT: All right. My understanding,
5 there has been no problems with that. So I'm going to
6 allow you to stay on your present bond status.

7 Of course, any obligations and reporting
8 requirements you've been under, you need to continue to
9 follow those.

10 Do you understand that, ma'am?

11 THE DEFENDANT: Yes. Thank you.

12 THE COURT: Okay. Anything else at this
13 time, Mr. Ballin?

14 MR. BALLIN: No, Your Honor.

15 THE COURT: Ms. Willis?

16 MS. WILLIS: No, Your Honor.

17 THE COURT: All right. Thank you, ma'am.
18 You will all be excused.

19 MR. BALLIN: Thank you, Your Honor.

20 (End of Proceedings.)

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1 I, Kristi Heasley, do hereby certify that the
2 foregoing 43 pages are, to the best of my knowledge,
3 skill and ability, a true and accurate unredacted
4 transcript from my stenotype notes in the matter of:
5 UNITED STATES OF AMERICA

6 VS

7 BRITNEY PETWAY, N.P.

)
)NO. 1:19-CR-10041
)JACKSON, TENNESSEE
)
)

9
10
11 Dated this 21st day of January, 2020.
12
13

14 /s/ Kristi Heasley

15 -----
16 Kristi Heasley, RPR
17 Official Court Reporter
18 United States District Court
19 Western District of Tennessee
20 Eastern Division
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